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Paper No. 3

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APR 23 2002

In re Application of :
Shimizu :
Application No. 10/004,385 :
Filed: November 1, 2001 :
Attorney Docket No. 56232.10 :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed March 8, 2002, to accord the above-identified application a filing date of November 1, 2001, instead of December 6, 2001.

The petition is **granted**.

37 CFR 1.10(d) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

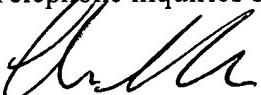
Petitioner has not supplied a copy of an express mail label with the date-in. A review of an USPS database indicates that the package arrived in Maryland on December 2, 2001. Therefore, the USPS had the package at least as early as December 2, 2001. A copy of a mail log kept by petitioner has been provided. Jason Jacobsen has provided a declaration stating that he personally deposited the package and that he made the log entry within one business day after deposit.

Upon consideration of all the facts, the application will be accorded a filing date of November 1, 2001.

A fee is unnecessary for a petition under 37 CFR 1.10. Therefore, the petition fee of \$130 paid with the instant petition will be credited to petitioner's deposit account.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of November 1, 2001.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley

Petitions Attorney

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy

Attached: Copy of printout from USPS database